

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 17679 of 1998

Between:

Syed Bahadur Hussain s/o Syed Bayzeed
R/o C/o Mohd. Abdul Quader, H.No. 17-1-242/A, Mama Mukhthar Street, Old
Santhoshnagar, Hyderabad.

..... PETITIONER

AND

1. Vice Chairman & Managing Director, A.P. State Road Transport Corporation, Musheerabad, Hyderabad.
2. Deputy Manager (Personnel) O/o the Regional Manager, Golconda Region, J.B.S. Picket, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of writ of mandamus declaring the proceedings No.P1/785(3)/96-HZ dated 6-3-1998 issued by the Personnel Officer, Hyderabad Zone as illegal and unjust and consequently direct respondents to grant service weightage from the date of initial appointment; 2) treating the period from 13-6-1975 to 10-1-93 as leave without pay for the purpose of increments and other attendant benefits; 3) fix pay of the petitioner on reinstatement in the appropriate scale duly taking into past service. 4) and direct the respondents to pay the difference of salary together with all consequential and pecuniary benefits to which the petitioner is entitled.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondent Nos. 1 & 2: MR. V.T.M. PRASAD,

The Court made the following order:

Oral Order:

This is an unfortunate case. The petitioner was initially appointed as Record Tracer into the service of the Andhra Pradesh State Road Transport Corporation (for short 'the APSRTC') with effect from 29-12-1959. Subsequently, he was also promoted as Junior Clerk in the month of May, 1960. Further, he was also promoted as Senior Clerk with effect from 23-05-1970. Thereafter, he was transferred to Medak Depot on 24-12-1973 and he reported at Medak depot on 31-12-1973. Since the petitioner was affected with Leprosy and as he was not allotted with any duties, after a lapse of about four months on 15/19-04-1974 he was directed to appear before the Civil Assistant Surgeon, Musheerabad, Hyderabad, who in turn referred him to the Government Leprosy Clinic, Karwan, Hyderabad (for short 'the Clinic'). Since he was being treated in the Clinic, the medical certificates were being issued from time to time as to the progress of his health. While he was under treatment, no salary was paid or medical reimbursement was made. He made several representations for payment of salary and his last representation was on 16-09-1985. Ultimately, he filed the writ petition before this court being W.P.No. 2265 of 1992 for payment of salary and other benefits from January, 1974 onwards. The said writ petition was disposed of on 23-09-1992 holding that since the petitioner was suffering with Leprosy, unless the petitioner is subjected to medical examination and if he was found that the nature of disease was non-infectuous, he may be permitted to join duty. In pursuance of the said order, the petitioner was subjected to medical examination and was found fit to join the service. Therefore, he was reinstated into service on 08-01-1993. In that capacity, he served till 31-10-1998 on the date when he attained the age of superannuation.

The grievance of the petitioner is that though after he retired on attaining the age of superannuation, the period from 13-06-1975 to 10-01-1993 was not regulated and no benefits as such were paid for that period. It is, of course, admitted by the petitioner

that all the benefits relating to the period from 29-12-1959 to 12-06-1975 and from 11-01-1993 to 31-10-1998 were paid in full. In fact, in this regard earlier W.P.No. 20561 of 1996 was filed before this court. A Division Bench of this court, while disposing of W.P.No. 20561 of 1996 by order dated 15-10-1997, held that if the petitioner was really aggrieved as to the implementation of the order of this court earlier, he could have filed contempt. It also further held that, in the previous writ petition, this Court had not granted the relief of reinstatement with back wages and continuity of service, therefore, such a claim cannot be granted in the said writ petition (W.P.No. 20561 of 1996) and that however, it was left open to the authorities to consider the petitioner's representation and pass appropriate orders within two months from the date of the said order. Pursuant to that order, the petitioner made a representation on 11-12-1997 and the same was considered and rejected by proceedings dated 06-03-1998 of the Personnel Officer, Hyderabad Zone. The said order is under challenge in this writ petition.

Learned counsel for the petitioner submits that once the petitioner has been reinstated into service on 10-01-1993 subjecting him to medical fitness, his services from 13-06-1975 to 10-01-1993 has to be regularized for the purpose of pension and other benefits. In the impugned order, some new thing has been dug up saying that since he abstained duties from 02-01-1974, he was removed from service on 13-06-19975. This issue was never raised by the authorities when two writ petitions were filed by the petitioner earlier. It is also not denied that the petitioner was subjected to periodical medical check up since he was suffering with infectious disease like Leprosy; he was directed to be treated at Clinic and he made several representations including the one on 16-09-1985. Once this is the position, the authorities are supposed to regularize the services of the petitioner from 13-06-1975 to 10-01-1993 during the period which he undergone treatment for Leprosy. Instead of regularizing his services, as per the regulations of the Corporation, the respondents issued the impugned proceedings stating that the petitioner ought not to have absented from duty, though rendered long service and aware of the provisions of leave regulations and found absent with effect from 13-06-1975 and due to his absence much inconvenience was caused in the accounts wing at Medak Depot and, therefore, there was no scope to give any relief.

I am of the considered opinion that the petitioner was subjected to periodical medical checkup and treatment with the Clinic. Once this is the position, the

impugned order discloses certain new thing, which was never brought to the notice of this court earlier when two writ petitions were filed by the petitioner. It does not lie in the mouth of the management to say that the petitioner abstained from duty, he ought not to have absented from duties and much inconvenience is caused to the accounts wing of Medak depot and, therefore, there is no scope for grant of any relief, which is unfortunate and absurd.

Therefore, I am of the opinion that the impugned order dated 06-03-1998 does not stand scrutiny of law. In the circumstances, the respondents are directed to regularize the period from 13-06-1975 to 10-01-1993 during which period the petitioner was out of duty due to treatment of Leprosy. It may be noted that a Leprosy patient cannot be treated in a short period of time. Some times even it takes decades to become non-infectuous, if not totally recovered. Unfortunately, there is no provision in the Andhra Pradesh State Road Transport Corporation Employees (Leave) Regulations, 1963 (for short 'the Regulations') to take care of such situation, except the Regulation 50 (C) of the Regulations, which reads as under:-

**“50 (C) Leave Admissibility and leave salary for the treatment of
“Leprosy/T.B./Cancer/Heart Diseases/Renal (Kidney) Failure”**

1. An employee who has been in continuous service of minimum of 5 years and who is suffering from Leprosy/T.B./Cancer/Heart disease/Renal (Kidney) failure (Leading to transplant or frequent dialysis) and undergoing treatment at Recognized Institution/Hospital or RTC Hospital/Dispensary, as an in-patient or out-patient, on production of a certificate to this effect from the CMO, APSRTC Hospital is entitled to leave salary equal to full pay leave for a period not exceeding 6 (six) months in lieu of half pay leave due to the employee on medical certificate provided the earned leave at his credit has been exhausted. Thereafter, the normal rule of half pay salary shall apply to the extent half pay leave is due on medical certificate.
2. If the leave due under clause (1) above falls short of the period of

treatment, the employee may be granted extra-ordinary leave. While on extra-ordinary leave, the competent authority, may grant “exgratia” payment equal to half of his/her pay, without any allowances of Rs. 1,000/- (Rs. One thousand only) whichever is less for the maximum period of six (6) months on production of a certificate from the Chief Medical Officer, APSRTC Hospital.

Provided the period of absence under Clauses (1) and (2) above shall be supported by a Medical Certificate as under Clause (1) from time to time and to the effect that there is a reasonable prospect of the employee returning to duty after the treatment.’

The above Regulation takes care of small period and the rest of the period how it should be regularized, the Regulations are silent. Therefore, the matter requires to be placed before the Managing Director of the APSRTC, who may consider the matter sympathetically and regularize the period from 13-06-1975 to 10-01-1993, since admittedly the petitioner suffered with infectious Leprosy during that period. If necessary, the Managing Director of the APSRTC may, by relaxing the Regulations, treat the above period i.e., from 13-06-1975 to 10-01-1993 either as extra-ordinary leave or leave without pay, or at least treat the period as continuous service for other benefits, if not for the purpose of salary etc.,

With the above observations, the writ petition is allowed to the extent indicated above. No costs.

C.V. RAMULU, J

Dt. 13-10-2004

Pvks/*

That rule nisi has been made absolute as above.

Witness the Hon’ble Sri Devinder Gupta, the Chief Justice on this Wednesday the thirteenth day of October, two thousand and four.

To

1. Vice Chairman & Managing Director, A.P. State Road Transport Corporation, Musheerabad, Hyderabad.
2. Deputy Manager (Personnel) O/o the Regional Manager, Golconda Region, J.B.S. Picket, Secunderabad.
3. 2CD copies.